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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,869	04/16/2004	Harold Edward Price	0021-49 CON	8604

25901 7590 09/17/2010
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EXAMINER

BLAIR, DOUGLAS B

ART UNIT	PAPER NUMBER
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2442

MAIL DATE	DELIVERY MODE
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09/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/825,869	Applicant(s) PRICE, HAROLD EDWARD	
	Examiner DOUGLAS B. BLAIR	Art Unit 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-59 is/are pending in the application.
- 4a) Of the above claim(s) 23,38 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-22,24-50 and 52-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/2/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 7-22, 24-37, 39-50, and 52-59 in the reply filed on 6/17/2010 is acknowledged.

Claims 23, 38, and 51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/17/2010.

Response to Arguments

Applicant's arguments filed 11/2/2009 and 2/16/2010 have been fully considered but they are not persuasive.

The applicant's arguments against the combination of Gringeri and Baker are no longer relevant because Baker is not relied upon anymore. The applicant has cancelled the subject matter from the independent claims that required Baker for the rejections and claims 23, 38, and 51 which pertained to feedback are withdrawn.

In response to the applicant's arguments filed on 11/2/2009 presented on page 48 of the applicant's response, these arguments mischaracterize Gringeri. The applicant states that Gringeri presumes that all users of a given stream are at the exact same point in data receipt and playback, and therefore Gringeri requires no server based process to keep track of the buffer status of the individual players. The applicant further states that at col. 13, lines 15-20 of Gringeri, there may be more than one of these (video decoders), and they can independently request programming

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however there is no teaching or suggestion anywhere in Gringeri that any given video stream can be distributed differentially to a plurality of users.

The Examiner disagrees with the applicant's assessment of Gringeri. The Examiner acknowledges that Gringeri's disclosure does not explicitly state that there is a different buffer model for each user's device but all of the evidence provided in Gringeri makes it clear that this is what is happening in Gringeri. First, Gringeri states that their invention applies to video on demand situations (col. 12, lines 14-17). There is no way Gringeri could be modeling every user's video decoder with a single model for all users. The very nature of on demand video requires that each user have control of when the video is delivered. Second, Gringeri in columns 13, 14, and 15 Gringeri discusses the decode buffer as a singular. If Gringeri pertained to non-differential data for each user, wouldn't Gringeri be performing all of the analysis based on the decode buffers of the plurality of users. The applicant's characterization of Gringeri is contrary to the disclosure of Gringeri.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7-22, 24-37, 39-50, and 52-59 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,233,226 to Gringeri et al.

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The applicant's claims are rejected according to the embodiments of Gringeri cited in the previous office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Asad Nawaz can be reached on (571) 272-3988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Primary Examiner, Art Unit 2442